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## TURNER v. RICHMOND &amp; R. R. RY. CO.

June 14, 1917.

[92 S. E. 841.]

**1. Appeal and Error (§ 1175 (5)\*)—Rendering Final Judgment—Two Trials Below.**—Under Code 1904, § 3384, where there have been two trials below the appellate court will first review the proceedings on the first trial and if there be error in setting aside the verdict on that trial it will annul all proceedings subsequent to that verdict and render judgment thereon.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4583.\* 1 Va.-W. Va. Enc. Dig. 578.]

**2. Master and Servant (§ 280\*)—Injury to Servant—Assumption of Risk—Jury Question.**—In a servant's action for injuries caused by a kick from a mule, evidence held to warrant a jury finding that plaintiff did not assume the risk.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 981-986.\* 9 Va.-W. Va. Enc. Dig. 725.]

**3. Master and Servant (§ 281 (1)\*)—Injuries to Servant—Contributory Negligence—Jury Question.**—Evidence held to warrant a jury finding that plaintiff was not guilty of contributory negligence.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 987.\* 9 Va.-W. Va. Enc. Dig. 725.]

**4. Appeal and Error (§ 1002\*)—Review—Verdict.**—A verdict on conflicting evidence ought not to be disturbed on appeal if the case was fairly submitted to the jury on the instructions.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3935-3937.\* 1 Va.-W. Va. Enc. Dig. 620.]

**5. Appeal and Error (§ 1033 (5)\*)—Review—Harmless Error.**—In an instruction that the risk of injury from a vicious and dangerous mule about which plaintiff had to work, but the character of which he did not know and could not have discovered by the exercise of ordinary care, and of which he was not warned by defendant "or its employees" who knew or ought, in the exercise of reasonable diligence, to have known was not one of the ordinary risks assumed by plaintiff by virtue of his employment, etc., any error in the use of the superadded words "or its employees" was not prejudicial to the defendant.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4056; Trial, Cent. Dig. § 587.\* 1 Va.-W. Va. Enc. Dig. 601.]

**6. Master and Servant (§ 190 (1)\*)—Injury to Servant—"Vice Principal"—Unassignable Duty.**—Although mere superiority in rank of foreman put in charge of a gang of employees does not per se affect his relation of fellow servant to those working under him,

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

where the foreman is engaged in the discharge of an unassignable duty for the master, he is not a fellow servant, but a vice principal.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 449, 450, 453, 468.\* 6 Va.-W. Va. Enc. Dig. 7.]

For other definitions, see Words and Phrases, First and Second Series, Vice Principal.]

**7. Master and Servant (§ 109\*)—Injuries to Servant—Vicious Animal—Safety Appliance Rule.**—The safe appliance doctrine imposed upon the master the duty of using ordinary care to furnish plaintiff, as stable boss, with a reasonably safe mule in connection with the duties imposed upon him by that employment.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 204.\* 9 Va.-W. Va. Enc. Dig. 677.]

Error to Circuit Court, Henrico County.

Action by Charles Turner, a minor, by his next friend against the Richmond & Rappahannock River Railway Company Judgment for defendant on second trial after verdict for plaintiff was set aside, and plaintiff brings error. Reversed, and judgment entered for plaintiff upon the original verdict.

*Smith & Gordon* and *James F. Minor*, all of Richmond, for plaintiff in error.

*Williams & Mullen* and *Thomas P. Bryan*, all of Richmond, for defendant in error.

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#### GOOCH v. SUHOR.

June 14, 1917.

[92 S. E. 843.]

**1. Executors and Administrators (§ 17 (3)\*)—Right to Appointment—Antenuptial Agreement.**—Where a wife by an antenuptial agreement has relinquished her claim to her husband's property, neither she nor any person designated by her has the right of administration of his estate under Code 1904, § 2639, relative to the appointment of administrators, unless the agreement has been canceled.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 45-47.\* 5 Va.-W. Va. Enc. Dig. 509.]

**2. Courts (§ 200¼\*)—Probate Courts—Jurisdiction—Marriage Settlements.**—In the absence of any statute conferring general equity

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.